

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Implementation of the Twenty-First Century
Communications and Video Accessibility Act of
2010, Section 105, Relay Services for Deaf-Blind
Individuals
CG Docket No. 10-210

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Genachowski issuing a statement.

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I. INTRODUCTION

1. The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), signed into law by President Obama on October 8, 2010, requires the Federal Communications Commission (Commission or FCC) to take various measures to ensure that people with disabilities have access to emerging communications technologies in the 21st Century.¹ Section 105 of this law directs the Commission to establish rules within six months of enactment of the new statute that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (specialized CPE) to people who are deaf-blind. The goal of this National Deaf-Blind Equipment Distribution Program (NDBEDP) is to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low income individuals who are deaf-blind.²

2. The Commission issued a Public Notice on November 3, 2010, seeking comment on a range of issues related to the Commission's implementation of the requirement for an NDBEDP.³ The comments filed in response to this Public Notice informed the Commission's preparation of this Notice of Proposed Rulemaking (NPRM). This item proposes rules to create an effective and efficient process governing the distribution of specialized CPE to enhance and promote access to telecommunications and related communications services by low-income individuals who are deaf-blind.

II. BACKGROUND

3. The CVAA authorizes the FCC to allocate \$10 million annually from the interstate telecommunications relay service (TRS) fund (TRS Fund) for the NDBEDP.⁴ The need for an effective equipment distribution program for communications access for people who are deaf-blind has been well documented. Expert and layperson witnesses testifying at Congressional hearings on the CVAA expressed their concerns that the promise of universal service in the Communications Act of 1934,⁵ intended to ensure that everyone in America has access to telephone services, has never been fulfilled for this population.⁶ While many states already distribute some specialized communications equipment to

¹ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010).

² *Id.* at § 105, to be codified at 47 U.S.C. § 719.

³ *Consumer and Governmental Affairs Bureau Seeks Comment on Implementation of Requirement to Define Programs for Distribution of Specialized Customer Premises Equipment Used by Individuals who are Deaf-Blind*, CG Docket No. 10-210, Public Notice, DA 10-2112 (Nov. 3, 2010) (NDBEDP PN).

⁴ 47 U.S.C. § 719(c)

⁵ 47 U.S.C. § 151.

⁶ *Hearing on Draft Legislation Enhancing Access to Broadband Technology and Services for Persons with Disabilities Before the House Subcommittee on Telecommunications and the Internet*, 111th Cong. 7 (2008), written statement of Jamaal Anderson on behalf of the Coalition of Organizations for Accessible Technology (COAT), also found at: <http://www.coataccess.org/node/58>. See also Congressional Testimonies of: Bobbie Beth Scoggins (President, Natl. Assn. of the Deaf): http://commerce.senate.gov/public/?a=Files.Serve&File_id=d1599ce3-4d8e-432f-bfd4-69b2c581d60c and Lise Hamlin (on behalf of the Hearing Loss Assn. of America and the Coalition of (continued....))

people with disabilities through their own state equipment distribution programs (EDPs), many, if not most, have been unable to afford the extremely high costs associated with communications equipment needed by people who are deaf-blind. For example, as noted below, the cost of some Braille displays run as high as \$7,000 to \$8,000, while hardware magnification systems can be as high as \$3,000.⁷

4. Comments received in response to the *NDBEDP PN* provide further evidence of the need for this program. The Helen Keller National Center (HKNC) describes the economic challenges confronted by people who are deaf-blind, and how these broaden the gap between the haves and have-nots with respect to who is able to acquire communications technology.⁸ HKNC explains the ongoing efforts by these individuals to mitigate daily isolation, and the barriers they face to civic and social involvement when they cannot afford the cost of equipment or the training on how to use it. Not being able to afford expensive specialized communications technology, HKNC says, prevents people who are deaf-blind from obtaining the information and tools they need to compete in the job market.⁹ The California Public Utilities Commission (California PUC) agrees, noting that unemployment and underemployment for people who are deaf-blind are high, “yet the equipment which supports greater integration with the community is often cost-prohibitive.”¹⁰

5. Inclusive Technologies affirms that “this program will fill a gap in equipment distribution that has been open for too long.”¹¹ Similarly, Amy Parker, an expert in the field of deaf-blindness, reports that the deaf-blind population has “been excluded from the vast progress in telecommunications that has occurred for people with typical hearing and sight.”¹² Finally, the American Association of the Deaf-Blind and related disability organizations (AADB Joint Commenters) assert that without this program, “Americans who have both hearing and vision losses would continue to be left behind in the explosive growth of Internet-enabled communications.”¹³ They point out that the combination of hearing and vision loss has caused this population to lag behind the great strides made in recent years by people who are deaf, hard of hearing, or blind.¹⁴

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Organizations for Accessible Technology):

http://energycommerce.house.gov/documents/20100610/Hamlin_Testimony_2010.06.10.pdf; and Resolution to Support Equal Access to Communications Technologies by People with Disabilities in the 21st Century, National Association of Regulatory Utility Commissioners (Feb. 20, 2008) (NARUC Resolution) (noting that the tens of thousands of people who are deaf-blind living in the United States “lack even the most basic access to telecommunications services”). NARUC further noted that the problem is particularly “acute in rural communities where people with disabilities are the least employed and can least afford expensive specialized customer premises equipment that can cost upwards of five thousand dollars.” Letter from David C. Coen, President, NARUC, to U.S. Congressmen Henry Waxman, Joe Barton, Rick Boucher and Cliff Stearns (Dec. 10, 2009).

⁷ See note 42, *infra*.

⁸ HKNC Comments at 3.

⁹ *Id.*

¹⁰ California PUC Comments at 14. For additional discussion on the isolation and unemployment experienced by this population, see National Coalition of Deafblindness Comments at 2; AADB Joint Commenters at 4,7.

¹¹ Inclusive Technologies Comments at 1.

¹² Comments of Amy Parker, Texas Tech University at 1.

¹³ AADB Joint Commenters at 1.

¹⁴ *Id.* at 2.

6. The current telecommunications relay services program¹⁵ and the requirements for accessible telecommunications equipment and services under Section 255 of the Communications Act¹⁶ have provided some communication safeguards for people with disabilities. Until now, however, the Commission has not addressed the specific needs of the deaf-blind population to the extent they may be differentiated from the needs of people who are deaf, hard of hearing, or have a speech disability that is not accompanied by blindness or low-vision. People who are deaf-blind may have varying levels of residual sight and hearing. While some may be born with significant levels of hearing and vision loss, others lose their sight and hearing gradually throughout their lifespan; and for some, deafness or blindness are experienced as a result of an illness, injury, or aging. These varying levels of disability, together with the geographically diverse nature of this population,¹⁷ present novel challenges for the Commission in our efforts to develop a nationwide equipment distribution program that effectively meets the communication needs of these individuals. The establishment of permanent rules for this program, we believe, must be informed by both data and experience.

7. For this reason, the Commission proposes to implement an eighteen-month pilot program of the NDBEDP, with interim regulations. We believe it is prudent to engage in such a trial program because the experiences gained and data gathered will provide us with a more complete and practical understanding of how to ensure the best use of the funds available under this program for the intended population. We further propose that the Commission reserve the option to extend the pilot program for up to an additional six months, for a total of two years if the Commission determines that such additional time is needed for this assessment. This eighteen to twenty-four month period should give the Commission sufficient time to analyze the results of the pilot program, and determine its effectiveness in achieving the congressional objective to expand communications access for deaf-blind Americans.

8. The pilot program the FCC proposes below relies heavily on currently operating state EDPs, and turns to alternative local distribution efforts only where state entities are not available to participate in this national program. During this trial period, we will be gathering extensive data to build a foundation for the development of permanent rules for the NDBEDP, which we will later adopt through a future rulemaking proceeding. Results from this pilot program will inform our efforts to develop national standards for eligibility and funding support, so that this program can fulfill the Act's goals of bringing telecommunications service, Internet access service, and advanced communications to persons across the country who are deaf-blind. Upon completion of the pilot program, we will recommend any changes that are needed to improve the program, and incorporate the information we have gathered into the record of our subsequent rulemaking proceeding for a permanent NDBEDP.

III. EQUIPMENT DISTRIBUTION PROGRAMS

9. In the *NDBEDP PN*, we sought comment on whether state EDPs should become the primary means of distributing equipment under the NDBEDP.¹⁸ We noted that at present, there are approximately 45 such state programs that vary widely in their program eligibility criteria, types of equipment distributed, method of providing assistance, level of training, and maintenance, upgrades, and repairs for distributed equipment. Commenters are divided on the extent to which the Commission

¹⁵ 47 U.S.C. § 225.

¹⁶ 47 U.S.C. § 255.

¹⁷ See HKNC Comments at 3 (“When one considers the geographic dispersion of individuals who are deaf-blind throughout the United States, especially in rural settings, building local capacity is challenging”).

¹⁸ *NDBEDP PN* at 5.

should rely on these programs for the distribution of equipment under the NDBEDP. While many were supportive,¹⁹ the AADB Joint Commenters raised concerns about state EDP funding cutbacks in many of these programs, as well as onerous eligibility requirements.²⁰

10. We have carefully reviewed the benefits and disadvantages of utilizing the state EDPs and believe that on balance, the use of these programs for our pilot program would be appropriate, with certain safeguards to protect against eligibility criteria that are not consistent with the CVAA, as noted below.²¹ More specifically, if a state has an established EDP that applies for and is selected to receive NDBEDBP funding, the Commission proposes that such program become the sole authorized entity for the state to receive compensation from the TRS Fund for the distribution of equipment to that state's deaf-blind residents for the period of the pilot program. For states that do not have an EDP or that have an EDP that does not apply for or is not selected to participate in this program, we propose allowing other programs (e.g., vocational rehabilitation programs, assistive technology programs, or schools for the deaf, blind or deaf-blind) or private entities (e.g., independent living centers, organizational affiliates, or private schools) to apply to the Commission for certification to distribute this specialized CPE in the state. We also propose that every potentially qualifying entity, whether an established EDP or an alternative program, be required to apply for and receive Commission certification of its eligibility to operate an equipment distribution program under the NDBEDP, to ensure compliance with our program rules. Finally, we propose that the factors to be considered in determining whether to grant certification of a local program – as well as in selecting among multiple applicants – include the extent to which each applicant has:

- expertise in the field of deaf-blindness, including a strong familiarity with the communications needs of this population;
- adequate staffing and facilities to administer the program;
- experience with the distribution of specialized CPE, especially to people who are deaf-blind;
- the ability to install specialized CPE covered under the program and to train users on how to use that equipment;
- the ability to effectively communicate with people who are deaf-blind (for training and other purposes), including the ability to communicate in sign language, provide materials in Braille, and use other assistive technologies and methods to achieve effective communication; and
- the ability to distribute equipment and related services to eligible individuals throughout the state (including to remote areas), either directly or in coordination with other local programs

¹⁹ See, e.g., Inclusive Technologies Comments at 2 (stating that the state EDPs “comprise a living repository of information about consumer needs and preferences that has been relatively untapped in the development of technology policy”); Virginia Statewide Interagency Team (Virginia SIT) Comments at 3; Florida Public Service Commission Ex Parte Comments at 6-8; *But see*, American Association of People with Disabilities (AAPD) Reply Comments at 4 (noting that some states have the capacity to effectively partner with the NDBEDP, but that other organizations should be utilized as well).

²⁰ AADB Joint Commenters at 5. See also ACB Comments at 9 (noting that their members have reported that “the current state of the telephone relay service program in the states is fragmented and unpredictable”); National Coalition on Deafblindness Comments at 4 (arguing that it would prefer a centralized regional distribution approach).

²¹ See paras. 20, 24, *infra* (proposing national income criteria, and to disallow employment criteria).

We seek comment on this approach as well as on other criteria that we should add to this list. We propose to provide notice to the public of which states will participate in the NDBEDP pilot program via their state EDP, after which we would commence the process of accepting and reviewing applications from other eligible entities (for states in which a state EDP has either not applied or has not been deemed eligible to participate in the NDBEDP). We further seek comment on the length of time for which such certification should be granted during the pilot program.²²

11. We recognize the geographical diversity of the deaf-blind population, and understand that not all such individuals may be living in close proximity to an EDP center, where they can try out equipment or arrange to have equipment brought to them.²³ We further understand from the California PUC that in order to meet the diverse needs of deaf-blind consumers throughout a state, “a collaboration or partnership” of various state programs – for example, a state’s vocational rehabilitation program, its department of education and/or its assistive technology program – may be necessary.²⁴ We propose to permit such coordinated state ventures, but tentatively conclude that where state EDPs have agreed to participate in the NDBEDP and have been approved by the Commission, these programs should assume full oversight and responsibility for all equipment distributed under the NDBEDP within their given state, and further propose that such programs become the sole entity authorized to receive compensation from the TRS Fund for the states in which they operate. In states without EDPs, we ask whether multiple entities should be permitted to oversee the distribution of and receive compensation for equipment to different regions of those states, or whether we should select a single entity to assume this oversight role across the state.

IV. CONSUMER ELIGIBILITY

1. Definition of Individuals who are Deaf-Blind

12. The CVAA defines as eligible for the receipt of specialized CPE low income persons who meet the definition of “individuals who are deaf-blind” contained in the Helen Keller National Center Act (HKNC Act).²⁵ The HKNC Act defines such individuals as persons:

(1) who have a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions; (2) who have a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and (3) for whom the combination of impairments described in clauses (i) and (ii) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.

13. In addition, under the HKNC Act, where individuals cannot be measured accurately for hearing and vision loss because of cognitive and/or behavioral constraints, they may still be considered deaf-blind if, through functional and performance assessment, they are determined to have severe hearing

²² We note that both state and Internet-based TRS providers receive certification for a period of five years. *See* 47 C.F.R. § 64.606(c). Although we will be conducting a subsequent rulemaking to promulgate final rules for this program, initial feedback on this point will be useful in developing a framework for a more permanent program.

²³ *See, e.g.*, HKNC Comments at 3.

²⁴ California PUC Comments at 17-19.

²⁵ *See* Pub. L. 111-260, Sec. 105, citing the Rehabilitation Act Amendments of 1992 (29 U.S.C. § 1905(2)).

and visual disabilities that cause extreme difficulty in attaining independence in daily life activities.²⁶ The *NDBEDP PN* sought general comment on how this HKNC definition “has been construed in other contexts, and in particular whether there is a discernable range of individuals who fall within this definition.”²⁷ Specifically, the *PN* recognized that “individuals who are considered to be deaf-blind may have varying degrees of hearing loss and/or vision loss” and asked commenters to discuss whether this definition is flexible enough to allow the Commission some discretion in determining who will be qualified under the NDBEDP.²⁸

14. Commenters largely proposed a flexible interpretation of this definition that would allow determinations of eligibility for equipment to turn on an individual’s functional abilities. For example, the AADB Joint Commenters ask for a definition that would consider the impact that a person’s hearing and vision loss has on his or her experience in maintaining independence, acquiring and keeping employment, participating in the community, and communicating with others.²⁹ They propose a definition that offers this approach: “Deaf-blindness is a combination of hearing and vision loss of any varying degree that affects a person’s ability to communicate, to receive environmental information to participate in the community, to obtain and keep a job, and/or to maintain independence.”³⁰ Similarly, the American Council of the Blind (ACB) urges the Commission to consider eligible those individuals for whom a combination of vision and hearing loss would make it difficult to utilize telecommunications and adapted communications devices designed for persons with either hearing or vision alone.³¹ A narrow interpretation of “individuals who are deaf-blind,” these and other commenters note, will exclude many individuals who are unable to access traditional communications equipment because of their disabilities.³²

15. While we are bound by statute to use the definition of individuals who are deaf-blind in the HKNC Act, we believe it would be appropriate to direct programs that are authorized to distribute equipment under the NDBEDP to apply this definition in accordance with the underlying intent of the CVAA. To this end, we propose that when applying the second prong of this definition, which requires “a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification,” local distribution programs take into consideration the settings in which the deaf-blind applicant is likely to establish telephone-type communication with others. For example, while a blind individual with a moderate hearing loss may be able to understand speech in a quiet room when using hearing aids, that same individual may not be able to participate in a telephone conversation in a public setting where there is background noise, even when the amplification for the incoming voice is at the equipment’s highest setting.³³ Accordingly, if an individual may need to use a telephone or communications device in a public setting, we propose that the distribution program be allowed to consider this in assessing that applicant’s eligibility to receive equipment. Similarly, we propose that the third prong of the HKNC Act definition, which focuses on the difficulties that an individual with a combination of vision and hearing losses has in attaining independence in daily life activities, apply to the

²⁶ Rehabilitation Act Amendments of 1992 (29 U.S.C. § 1905(2)).

²⁷ *NDBEDP PN* at 2.

²⁸ *Id.*

²⁹ AADB Joint Commenters at 4; *see also* HKNC Comments at 1-2.

³⁰ AADB Joint Commenters at 6.

³¹ ACB Comments at 3.

³² ACB Comments at 2. *See also* HKNC Comments at 1-2; National Coalition on Deafblindness at 1-2 (HKNC definition does not include people who need these types of equipment but don’t fall within the definition).

³³ *See, e.g.,* Myers Comments at 1.

ability of such individual to use the communication services covered by Section 105.³⁴ We believe that consideration of these functional capabilities would be in keeping with Congress's overall goal to ensure the availability of existing and emerging communication technologies for the deaf-blind population. We also believe that when applied in the manner proposed, this functional definitional approach will provide flexibility requested by many of the commenters in this proceeding. We seek comment on this approach.

2. Verification of Disability

16. In the *NDBEDP PN*, we sought comment on how best to determine the physical eligibility of potential program applicants using the HKNC Act statutory definition. We asked, for example, to what extent verification from a physician, audiologist, vocational rehabilitation counselor, or medical, educational or employment professional should be required to confirm eligibility.³⁵ In response, commenters generally urge the Commission to allow the means of such verification to be relatively simple. According to Missouri Assistive Technology, arranging travel or appointments for the purpose of obtaining certification from a medical provider or agency, or even making contact with such entities via telephone or the Internet, can be difficult for deaf-blind consumers.³⁶ They urge, therefore, that if verification is required, it be "as painless as possible for the deaf-blind consumer."³⁷ Other commenters agree on the need to allow documentation on physical eligibility from as many sources as feasible.³⁸

17. While we believe that some verification of a person's disability is necessary to prevent fraud and abuse, given the physical limitations of persons covered under this program, we understand the need to permit verification of one's disability in a non-burdensome manner. Accordingly, we tentatively conclude that individuals claiming eligibility under the NDBEDP be permitted to obtain verification from any practicing professional who has direct knowledge of the individual's disability. Such professionals would include, but not be limited to, a vocational rehabilitation counselor, audiologist, speech pathologist, educator, hearing instrument specialist, or physician. Any of these professionals must be able to attest to the applicant's physical disability (as defined above), and in doing so, may include information about the inability of such individual to use traditional or emerging communications equipment as a result of his or her hearing and vision loss.³⁹ We seek comment on the content of the attestations of such professionals. We propose that the professional provide his or her name, title, and contact information, including address, phone number and e-mail address in the certification. We also seek comment on whether such professionals should be required to certify to the best of their knowledge that the individual's disability satisfies our eligibility requirements. Alternatively, should we require such certifications be made under penalty of perjury?

³⁴ This would include the ability to communicate with other individuals over distances via telephone, TTY, the Internet, pagers, fax machines, and other technologies. *See generally* National Coalition on Deafblindness Comments at 2.

³⁵ *NDBEDP PN* at 2.

³⁶ Missouri Assistive Technology (MoAT) Comments at 1.

³⁷ *Id.*

³⁸ *See, e.g.*, ACB Comments at 4; National Coalition on Deafblindness Comments at 2.

³⁹ *See, e.g.*, AADB Joint Commenters at 6-7.

3. Income Eligibility

18. The CVAA limits eligibility in the NDBEDP to individuals who have low incomes, but does not contain further guidance on this limitation.⁴⁰ In the *NDBEDP PN*, we sought comment on the appropriateness of applying to the NDBEDP the definition of “qualifying low-income consumer” that is used by the Lifeline and Link up universal service programs.⁴¹ We further asked whether we should allow consideration of the high personal expenses generally incurred by people who are deaf-blind in determining program eligibility. Finally, we asked to what extent applicants should be required to submit financial documentation to support their income eligibility.

19. Commenters generally are concerned that establishing the same income threshold now applied to universal service low income programs – *i.e.*, 135 percent of the Federal Poverty Guidelines (FPG) – would be too exclusionary. Many note the very high cost of specialized equipment for people who are deaf-blind,⁴² and urge a more generous income threshold, for example, 400 to 500 percent of the poverty guidelines.⁴³ They assert that this income threshold would not only take the high costs of specialized CPE into consideration, but would encourage use of the NDBEDP by as many deaf-blind individuals as possible, including those who might be able to use the equipment in their employment.⁴⁴ A number of commenters also propose that disability-related expenses (*e.g.*, the costs of personal assistants, interpreters, medical care, and independent living costs) be taken into account in determining an individual’s income.⁴⁵ These parties report that the extremely high nature of these expenses can significantly reduce the disposable income of people who are deaf-blind.⁴⁶

⁴⁰ Pub. L. 111-260, § 105, as amended by Pub. L. 111-265, § 2, to be codified at 47 U.S.C. § 719(a).

⁴¹ *NDBEDP PN* at 1-2. This eligibility standard can be found at: www.lifelinesupport.org/li/low-income/eligibility/federal-criteria.aspx.

⁴² MoAT Comments at 2 (agreed that estimates in the *NDBEDP PN* of \$5,000 to \$10,000 for specialized CPE appear to be accurate); AADB Joint Commenters at 7 (cost of Braille displays is between \$4,000 and \$7,000); ACB Comments at 6 (hardware magnification systems average from \$500 to \$3,000 and the Deaf Blind Communicator is priced around \$7,500); CSD Comments at 4 (a Cell Deaf-Blind Communicator costs \$8239 as of November 2010); Comments of Darlene Laibl-Crowe (these specialized equipment costs are as high as \$10,000).

⁴³ *See, e.g.*, CSD Comments at 3-4 (recommends setting participation at 500% of the FPG; ACB Comments at 5 (noting that the 135% threshold would exclude numerous individuals who could benefit from the NDBEDP, and recommending a threshold of 400 % of the FPG that also considers “extraordinary” expenses that are disability-related).

⁴⁴ *See, e.g.*, National Coalition of Deafblindness Comments at 2 (proposes adopting a sliding scale to assist persons who are up to 400 percent of poverty level to take into consideration the “staggering medical and therapy expenses” not covered by insurance); MoAT Comments at 3 (applicants must have an adjusted gross income that cannot exceed \$60,000 for a 1-2 person household). *But see* Virginia SIT Comments at 1-2, which sets its state program at 250 percent of the FPG.

⁴⁵ *See, e.g.*, ACB Comments at 5; CSD Comments at 3; Myers Comments at 1; Connecticut Board of Education and Services for the Blind Comments at 1; Virginia SIT Comments at 2; AADB Joint Commenters at 4.

⁴⁶ *See, e.g.*, ACB Comments at 5 (expenses associated with paying medical bills, personal assistance, transportation, or interpreters could utilize substantial portion of the income that a deaf-blind person earns); National Coalition on Deafblindness Comments at 2 (individuals who are deaf-blind face “significant extraordinary expenses in their daily lives for . . . transportation, adaptive equipment, communication assistance, community access support service, etc.”); AADB Joint Commenters at 7 (regular expenses associated with medical and support services “drastically reduces the amount of money available for purchase of specialized CPE”); Connecticut Board Comments at 1 (need continued....)

20. We acknowledge the unusually high medical and related costs associated with being both deaf and blind. However, we are concerned about achieving consistency across the states, and unnecessarily complicating the equipment application process by requiring individual evaluations of personal expenses. At the same time, we recognize the extraordinarily high costs of the specialized equipment covered under this program, which virtually all commenters agree range from \$5,000 to \$10,000 per person. In order to effectively take into consideration both these costs and the unusually high costs of medical and other expenses associated with being deaf-blind, we propose an income threshold, to be applied nationwide, that is 400% of the FPG.⁴⁷ We seek comment on this proposal. Alternatively, we seek comment on whether states that already have EDPs with income thresholds should be permitted to use their own low income criteria for distributing equipment under the NDBEDP during the pilot program. For states that do not have an EDP with an income threshold, we seek comment on a proposal that would allow such programs to use our proposed federal default income threshold.⁴⁸

21. As for verifying one's income level, we propose that individuals already enrolled in certain federal low income programs automatically be deemed eligible to receive equipment as long as the income threshold for eligibility in those programs does not exceed the threshold we establish for participation in this program. This is supported by several commenters in this proceeding, who agree that individuals who have met the income criteria of certain low-income programs, such as SSI,⁴⁹ Social Security Disability Insurance,⁵⁰ or Section 8 Housing should automatically be eligible for participation in the NDBEDP.⁵¹ We seek comment on this approach, as well as a list of additional programs that should be included to determine automatic eligibility.⁵²

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to ensure that individuals not be penalized for higher income levels that would otherwise eliminate them from this program).

⁴⁷ The 2010 federal poverty level is \$10,830 for an individual; 400 percent of this level would be \$43,320. See <http://aspe.hhs.gov/poverty/10poverty.shtml> (retrieved December 10, 2010). These guidelines are regularly updated by the U.S. Department of Health and Human Services at 42 U.S.C. § 9902(2).

⁴⁸ This latter approach – allowing state programs to determine income eligibility where their EDPs already have income eligibility criteria – is consistent with the approach adopted for the Universal Service low income programs. The Universal Service Administrative Company sets federal default income eligibility criteria for states with no state-funded discounts, allowing for participation where individuals are enrolled in one of the following programs: Federal Public Housing Assistance or Section 8; Supplemental Nutrition Assistance Program, formerly known as Food Stamps; Low Income Home Energy Assistance Program; Medicaid; National School Lunch Program's free lunch program; Supplemental Security Income (SSI); Temporary Assistance for Needy Families. See 47 C.F.R. §§54.400(a), 54.409(b); <http://www.lifelinesupport.org/li/low-income/eligibility/federal-criteria.aspx>.

⁴⁹ AADB Joint Commenters at 6-7; DBYAA Comments at 1; MoAT Comments at 2; National Coalition on Deafblindness Comments at 2-3.

⁵⁰ See, e.g., AADB Joint Commenters at 6-7.

⁵¹ See, e.g., National Coalition on Deafblindness Comments at 2.

⁵² The NDBEDP PN also listed Medicaid, Food Stamps, Federal Public Housing Assistance, Temporary Assistance to Needy Families, and the National School Lunch free lunch program as qualifying programs to be consistent with the universal service low income criteria. See 47 C.F.R. §54.409(b).

22. Where individuals are not already enrolled in any such programs, commenters generally support a method of verification that is not unduly burdensome.⁵³ We seek comment on what that method should be.

4. Other Eligibility Requirements and Considerations

23. We seek comment on other eligibility requirements, unrelated to disability or income, that might be appropriate for the NDBEDP. For example, we have learned that the Missouri Assistive Technology program requires recipients of its equipment to have access to telephone or Internet service before being able to receive the equipment that is used with those services.⁵⁴ We believe the rationale for this restriction is that it will serve no purpose to give equipment to people who cannot use it, and seek comment on whether we should apply a similar restriction to the NDBEDP.

24. The Commission has learned that certain state assistance programs will pay for communications equipment only if the deaf-blind applicant requesting a device has a job or is actively seeking employment.⁵⁵ Because persons who are deaf-blind typically cannot afford the equipment that they need to find and hold jobs, this often disqualifies them from obtaining equipment, creating what HKNC describes as a “Catch-22.”⁵⁶ The Commission believes that such policies, while possibly appropriate for vocational rehabilitation and other targeted employment programs, would thwart the objectives of the NDBEDP. We therefore propose to prohibit NDBEDP program participants from applying these criteria in determining eligibility for equipment under this national program. We seek comment on this proposal.

25. In their reply comments, AAPD proposes that the onus of determining the eligibility of consumers under the NDBEDP be on the authorized programs that distribute the equipment.⁵⁷ We tentatively agree, and seek comment on this approach.

V. COVERED EQUIPMENT AND RELATED SERVICES

1. Scope of Specialized CPE

26. Section 105 authorizes the distribution of specialized CPE needed to make telecommunications services, Internet access service and advanced communications accessible to people who are deaf-blind. The *NDBEDP PN* referenced existing definitions for each of these kinds of services, which include, *inter alia*, voice, data and video services provided over the Internet, along with equipment needed to access more traditional telephone-based wireline and wireless services.⁵⁸ It also set out the definition of customer premises equipment contained in the Communications Act: “equipment employed

⁵³ See, e.g., AADB Joint Commenters at 6-7; DBYAA Comments at 1; MoAT Comments at 2; National Coalition on Deafblindness Comments at 2-3.

⁵⁴ MoAT Comments at 3.

⁵⁵ HKNC Comments at 3.

⁵⁶ *Id.* See also California PUC Comments at 18 (California Department of Rehabilitation, which purchases specialized equipment for its clients, only serves clients of employment age and ability); AADB Joint Commenters at 5 (the requirement of many state equipment programs that applicants be actively seeking employment results in excluding senior citizens who are deaf-blind).

⁵⁷ AAPD Comments at 1-2.

⁵⁸ *NDBEDP PN* at nn.6-8.

on the premises of a person (other than a carrier) to originate, route or terminate telecommunications,”⁵⁹ as well as the definition of specialized CPE contained in the Commission’s rules: “customer premise equipment which is commonly used by individuals with disabilities to achieve access.”⁶⁰ It then sought comment on the types, costs, and availability of specialized CPE that should be covered under the NDBEDP.

27. Comments received in response to the *NDBEDP PN* demonstrate the wide range of equipment suitable for people with varying degrees of vision and hearing loss. These comments make clear that people who are deaf-blind rely on multiple types of communications software and devices, and access the telecommunications system in various ways, including through the different forms of TRS. More specifically, the communications technology appropriate for any one individual will depend on the nature and severity of that person’s disability. By way of example, the California PUC sets forth an extensive list of equipment used by this population, including: TTYs with Braille or large visual displays, amplified phones, captioned telephones, phones with extra-large buttons, high volume speakerphones, accessories that permit voice dialing, talking Caller ID, and number announcers.⁶¹ More advanced devices, usable with Internet-based, data or mobile services include software to enable instant messaging, tablets and other devices used for video communications, Braille reader applications that can be downloaded onto touch screen cell phones, and mobile devices to allow the exchange of text messages through touch.⁶² Still other devices, noted by the AADB Joint Commenters, include optical character recognition software, screen magnification programs, and tactile signal alerting systems.⁶³

28. Given the varied nature of both the deaf-blind population and breadth of communication technologies that can meet the individual and unique needs of these individuals, we propose that state EDPs or certified NDBEDP participants (where there is no state EDP) be given the discretion to determine the specific equipment needed by individual consumers during the NDBEDP’s pilot period, provided that such equipment can make telecommunications service, Internet access service, and advanced communications, including interexchange services or advanced telecommunications and information services, accessible by individuals who are deaf-blind.⁶⁴ We further propose that in addition to hardware, these programs include within their range of equipment for distribution, software and other applications that are needed to achieve access to the communication services covered under Section 105.

29. We believe that the effectiveness of the NDBEDP will turn in part on the extent to which this program can address the diverse needs and preferences of the deaf-blind population in a world of rapidly evolving communications technologies. To this end, we believe that the NDBEDP will be more effective if we allow the distribution of a broad range of equipment to meet these individualized needs. Nevertheless, we agree with commenters that such technologies should be limited to those used for

⁵⁹ 47 U.S.C. § 153(14).

⁶⁰ 47 C.F.R. § 7.3(j). *See also* 47 C.F.R. §64.607(a); *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6435, paras. 34-36 (1999).

⁶¹ California PUC Comments at 4-9.

⁶² *Id.* at 10-14. *See also* ACB Comments at 5-6; Myers Comments at 1.

⁶³ AADB Joint Commenters at 9-10.

⁶⁴ Congress intended for people who are deaf-blind to be able to acquire equipment in any of these communication categories.

communications services covered by the CVAA, rather than other life activities.⁶⁵ We intend to examine the kinds of equipment that are requested and distributed during the pilot program to assess both the demand for the varied technologies and to make any necessary adjustments in the types of equipment covered under this program. We seek comment on this approach.

30. In the *NDBEDP PN*, we also sought comment on the extent to which equipment distributed under the NDBEDP should include mainstream equipment that is needed for use with specialized CPE.⁶⁶ In response, some commenters noted that some off-the-shelf technologies, such as smart phones that have audio output and instant messaging programs, may be adaptable to meet the needs of people who are deaf-blind, and should be covered by the program.⁶⁷ In this NPRM, we seek further comment on the extent to which such mainstream equipment should be considered “specialized customer premises equipment” under the statute and should be made available for distribution under the NDBEDP. We also seek comment on the extent to which funding caps should be imposed on the amount of money available for the purchase of equipment – whether mainstream or adaptive – for each individual who is eligible to receive equipment under the NDBEDP, what the appropriate funding caps should be, and the period of time to which such cap should apply. In other words, should each eligible individual be able to receive equipment costing no more than a specified amount during one or more years?

31. Finally, the *NDBEDP PN* sought comment on the criteria we should establish to allow equipment upgrades and replacements.⁶⁸ Commenters generally agree on the periodic need for both. AAPD recommends allowing for replacements every 3 years,⁶⁹ as does CSD, the latter noting that a longer time limit might preclude enabling persons to benefit from modernization of the communication technologies they are using.⁷⁰ However, Missouri Assistive Technology suggests hardware upgrades every 4-5 years, while allowing software upgrades more frequently.⁷¹ Seeking to balance the limited funding in this program with advances in technology, we propose in this NPRM that individuals be permitted to obtain new equipment every five years and new software on an as needed basis. Again, we ask whether individuals seeking software upgrades should be limited by a monetary cap, to the extent that there are costs associated with these upgrades.

2. Research and Development

32. In the *NDBEDP PN*, we sought comment on ways to ensure that the regulations developed for the NDBEDP encourage the use of new communications technologies for the deaf-blind population.⁷² In response, commenters report significant gaps in the existing technologies used by this community. For example, the California PUC asserts that state EDPs are often not able to procure new devices for this population, and instead must refurbish and recycle outdated equipment. They question the appropriateness of dedicating the full \$10 million in this program to the distribution of devices

⁶⁵ See, e.g., National Coalition on Deafblindness Comments at 3.

⁶⁶ *NDBEDP PN* at 4.

⁶⁷ See, e.g., California PUC Comments at 13-14; AADB Joint Commenters at 9-12; Myers Comments at 1-2.

⁶⁸ *NDBEDP PN* at 4-6.

⁶⁹ AAPD Reply Comments at 4.

⁷⁰ CSD Comments at 3.

⁷¹ MoAT Comments at 3; see also Myers Comments at 2 (also suggesting the replacement of equipment every four to five years).

⁷² *NDBEDP PN* at 4-5; see also 47 U.S.C. § 225(d)(2).

without setting aside some funds for research and development (R&D), because the equipment now distributed only serves a “small, specialized segment” of this community.⁷³ ACB agrees that the current lack of equipment choices will make it difficult for the NDBEDP to fully serve the needs of most persons who are deaf-blind.⁷⁴ They and others urge that funding for this program be used in part to support R&D efforts specifically targeted to ensuring that the deaf-blind community can keep up with 21st century communications technologies.⁷⁵ Similarly, the AADB Joint Commenters point out that because this market is so small, businesses are not engaging in active R&D to keep pace with the technology available to the general public. They add that previous efforts to meet the needs of deaf-blind people were “too expensive to implement and/or too cumbersome to maintain and quickly became obsolete.”⁷⁶ However, Inclusive Technologies disagrees with setting aside funds for R&D, and suggests that the incentive to sell products through the NDBEDP will be enough for manufacturers to conduct their own R&D on this type of CPE in order to increase functionality and lower costs.⁷⁷

33. A few commenters also recommend setting aside a portion of the funds for market research; they suggest that a lack of existing studies on the ways that deaf-blind people use specialized CPE warrants such inquiries. Inclusive Technologies, for example, notes the importance of gathering information on the number of potential participants in the NDBEDP, broken down by the type of technologies needed (*e.g.*, use of audio amplification, Braille, text, etc.), preferences for and usage of (both current and potential levels) different types of specialized CPE, and the best means of providing outreach, training, and other information to deaf-blind individuals.⁷⁸

34. One of the purposes of the NDBEDP is to ensure that as 21st century communications technologies continue to be developed for the general public, people who are deaf-blind are not left behind. Yet the record in this proceeding suggests that even current communications technologies may not be meeting the needs of the full spectrum of people who are deaf-blind. We are mindful of the need for solutions to fill these technology gaps, but are concerned about the extent to which we have discretion under the CVAA to utilize for research and development money that is allocated for equipment distribution. In addition, at this stage of the NDBEDP, without a better grasp of the specific gaps in current technologies used by the deaf-blind community, and without a fuller understanding of what the costs of closing those gaps are likely to be, it may be premature to set aside significant funds for R&D efforts. Among other things, the type of R&D needed to close these gaps may require a considerable investment of funds, which may be far above what is available through this program in any one year. Furthermore, allocating even a small percentage of that support to R&D may not achieve its intended purpose, and may only serve to divert funding that could otherwise be used for equipment distribution. Accordingly, we tentatively propose not to allocate funding at this time for R&D. However, we seek further comment on the extent to which there is a basis for concluding that R&D is

⁷³ Specifically, according to the California PUC, the devices most widely used are Braille readers that have been discontinued. Comments of California PUC at 16.

⁷⁴ ACB Comments at 8; *see also*, Arizona Association of the Deaf Blind Comments at 1-2, noting that current technologies are “not sophisticated enough in both hardware and systems design to make it easy or efficient for deaf-blind people to get compete access to most communication situations.”

⁷⁵ *Id.* (recommending up to 20 percent of the annual funds be set aside for this purpose). *See also* DBYAA Comments at 2; Lighthouse for the Blind, Inc. (Lighthouse) Comments at 2; HKNC Comments at 3-4.

⁷⁶ AADB Joint Commenters at 3 (seeking that no more than 10 percent be allocated for R&D).

⁷⁷ Inclusive Technologies Comments at 3-4; Inclusive Technologies Reply Comments at 1.

⁷⁸ Inclusive Technologies Reply Comments at 1; *see also* AADB Joint Commenters at 5 (adding that research is needed on how technology for this community becomes obsolete and needs replacing).

necessary to ensure an effective distribution program because solutions do not currently exist to meet the needs of the deaf-blind population. If this is the case, we further ask whether we have the discretion under Section 105 to set aside funds for R&D at some point in the future. Identifying specific R&D projects needed to close these technology gaps would help to inform our decision on this issue, as would feedback on the specific funding amounts that should be allocated for projects that are identified. Finally, we also solicit input on other ways – i.e., besides setting aside funds for R&D – that we can encourage and facilitate innovations on a long-term basis, to fully address the communications access needs of the deaf-blind population. We specifically ask innovators, service providers, and manufacturers to discuss what measures and incentives are needed to encourage industry to respond to the needs of this community.

35. With respect to conducting inquiries on the equipment needs and preferences of the deaf-blind community, we do not propose setting aside funding for market research at this time. Rather, it is our expectation that we will be able to collect much of the information that such research would gather through the various reporting requirements that we propose below. To the extent that our reporting obligations are not adequate for this purpose, we may examine the need for specific market research in the context of a future rulemaking proceeding on this program..

3. Individualized Assessment of Communication Needs

36. In the *NDBEDP PN*, we sought comment on the extent to which funding under the NDBEDP should cover individualized assessments of the communications capabilities of persons who are deaf-blind when these individuals request equipment under the NDBEDP.⁷⁹ As noted above, several commenters note that there is no single type of specialized CPE that meets the diverse needs of all users who are deaf-blind individuals.⁸⁰ Thus, we recognize a definite need for qualified assistive technology specialists, familiar with both the manner in which deaf-blind people communicate and the range of specialized equipment available, to conduct such assessments to ensure that the equipment given out effectively meets each recipient's unique communications needs. We propose that the state EDPs or certified NDBEDP participants (where there is no state EDP) be given the discretion to determine the need for such assessments on a case-by-case basis, and to select the appropriate personnel within their programs to carry out this responsibility. We further propose that the costs for such assessments be reimbursable as necessary to facilitate the efficient and effective distribution of equipment for use by people who are deaf-blind. We seek comment on these tentative conclusions, as well as other matters related to the administration of this aspect of the NDBEDP.

4. Installation and Training

37. In the *NDBEDP PN*, we sought comment on the extent to which the NDBEDP should provide funding for training, to ensure consumers know how to use the equipment they receive.⁸¹ We also sought comment on the costs of such training, and whether or not these costs should be covered under the NDBEDP. Most importantly, we sought comment on whether providing funding for such training under this national program would be within the scope of the Commission's authority.⁸²

⁷⁹ *NDBEDP PN* at 6.

⁸⁰ ACB Comments at 6; CSD Comments at 4; MoAT Comments at 4.

⁸¹ *NDBEDP PN* at 6.

⁸² *Id.*

38. Commenters stress that both the installation of equipment and training on how to use it are necessary components of an effective equipment distribution program. According to ACB, deaf-blind people typically need customized solutions, which sometimes require multiple pieces of equipment to fit their individual needs, and require training by highly skilled and experienced professionals to set up and use these devices.⁸³ The California PUC agrees that the highly specialized nature of this equipment requires extensive training for its effective use.⁸⁴ But commenters are also in agreement that there is a severe shortage of personnel qualified to conduct training.⁸⁵ To remedy this, some commenters suggest that an affiliated network of trainers be established on a regional or statewide basis through a nationwide training program that would both increase the number of qualified trainers throughout the country and establish national standards for training certification.⁸⁶

39. Given the highly specialized nature of the equipment to be distributed under this program, and the lack of communications experience by its future participants, we propose that funding be available for the installation of equipment and individualized training on how to use this equipment under the NDBEDP. We seek comment on this tentative conclusion and how such training can best be achieved, given the scarcity of experienced trainers, especially in remote and rural areas. We also request that commenters address whether the Commission has the discretion under Section 105 to permit the reimbursement of expenses associated with a national training program to expand the number of persons who are qualified to carry out training on this specialized CPE, the merits of setting aside such funds, and to propose the structure and contents of such a program. Alternatively, we seek comment on the extent to which online learning modules and remote technical assistance, including a technical support hotline can fill this void, as suggested by AADB Joint Commenters.⁸⁷ We further seek comment on ways that we may be able to work with equipment and software manufacturers whose equipment is purchased for the NDBEDP on training for individuals receiving equipment under this program.

5. Maintenance, Repairs and Warranties

40. In the *Public Notice*, we sought comment on the costs associated with maintenance and repair of specialized CPE used by the deaf-blind community.⁸⁸ Most commenters note that warranties, on-going maintenance, and repair of equipment for people who are deaf-blind are important considerations.⁸⁹ AADB Joint Commenters assert that the average cost of equipment repair can range from \$400 to \$4,000.⁹⁰ They further assert that the average turnaround time for repair is often six to eight

⁸³ ACB Comments at 6-7. For example, CSD points out that Braille displays are often paired with TTYs, two forms of specialized CPE (CSD Comments at 4 n. 5); *see also* National Coalition on Deafblindness Comments at 3 (estimating that training can cost many times more than the equipment itself).

⁸⁴ California PUC Comments at 16.

⁸⁵ ACB comments at 7; HKNC Comments at 3; DBYAA Comments at 2.

⁸⁶ HKNC Comments at 3, proposing a “Train the Trainer” program under the NDBEDP that would create a National Training Team, the members of which would achieve certification after achieving a certain level of competency; ACB Comments at 10, recommending that funding up to \$400,000 a year be set aside for a training curricula that results in a certificate of competency in Assistive Technology for Persons who are Deaf-Blind; TEDPA Comments at 1.

⁸⁷ DBYAA Comments at 2; AADB Joint Commenters at 12.

⁸⁸ *NDBEDP PN* at 4.

⁸⁹ *See, e.g.*, National Coalition on Deafblindness Comments at 3; DBYAA Comments at 2.

⁹⁰ AADB Joint Commenters at 9-10.

weeks, and urge the Commission to ensure that the NDBEDP arranges transitional support via the availability of loaner or functionally equivalent equipment while the affected equipment is being repaired.⁹¹ The Virginia Statewide Interagency Team similarly recommends that any device selected for distribution under the NDBEDP carry up to a five-year warranty for maintenance, updates, and repair, and that these costs be included in the purchase price.⁹² Still others note that separate rules and processes may be appropriate for cases where equipment breakdown is due to negligence or other misuse.⁹³

41. Given these various concerns, and the past practices of state EDPs to include the costs of maintenance and repairs within their local distribution programs, we tentatively conclude that such expenses should be compensable under the NDBEDP where these are not incurred as a result of negligence or misuse on the part of the consumer or distribution program. We seek comment on this approach, and specifically ask for feedback on the extent to which maintenance, repairs, and warranties should be covered by this program. For example, should this program only cover such maintenance to the extent covered under the manufacturer's warranty, or go beyond that warranty? What limits – in terms of duration and cost – should be imposed if the latter approach is chosen?

42. We understand that some EDPs give equipment out on loan while others allow consumers to keep their equipment. We seek comment on the appropriateness of either approach for the purposes of the NDBEDP. We further solicit comment on whether programs authorized to distribute equipment should have a means of allowing consumers to return equipment that they no longer need so that it can be re-furbished and re-distributed to other individual program participants on an as needed basis.

6. Outreach and Education about the NDBEDP

43. Commenters to this proceeding report difficulty in providing an exact number of individuals living in the United States who are deaf-blind.⁹⁴ Nevertheless, commenters emphasize the importance of keeping the deaf-blind community informed about the NDBEDP so that they might receive the full benefits of this program. For example, CSD stresses the need to reach out to the deaf-blind community to secure their ongoing feedback on the NDBEDP, and recommends that special attempts be made now and in the future to send notices to national deaf-blind organizations and other interested parties, encouraging them to forward notices to their constituencies, so that the Commission can obtain input from the deaf-blind community as the NDBEDP moves forward.⁹⁵ Similarly, the Lighthouse for the Blind suggests that the Commission create a forum or committee to ensure that feedback is provided on the usability of newly developed equipment designed to meet the needs of this community early on, so that such feedback can be taken into consideration during the equipment development process.⁹⁶

⁹¹ AADB Joint Commenters at 9-10.

⁹² Virginia SIT Comments at 4.

⁹³ MoAT Comments at 4; Myers Comments at 3-4.

⁹⁴ *See, e.g.*, CSD Comments at 6 n.10 (citing a 2009 NARUC Resolution, estimating this figure to be between 70,000 and 100,000, but noting that the Alabama Institute for the Deaf-Blind uses an estimate of 40,000); AADB Joint Commenters at 7 (“there are very few statistics that accurately track the deaf-blind population”).

⁹⁵ CSD Comments at 6-7.

⁹⁶ Lighthouse Comments at 1-2. *See also* Inclusive Technologies at 2 (recommending that outreach be a component of the NDBEDP).

44. We seek further comment on the level and types of outreach that will be needed to enable the NDBEDP to fulfill Congress's objective of bringing communication technologies to the deaf-blind community. As noted below, under our pilot program, we propose that state EDPs and other authorized programs be reimbursed only for the funds that they spend up to a specified allotment, and that they lose funds left unspent.⁹⁷ It is our expectation, therefore, that states will have their own incentives to conduct the outreach necessary to get this equipment into the hands of their deaf-blind citizens so they can spend, rather than lose, the money allotted to them. However, because not all states have EDPs, and because some states may not act on this incentive, we seek comment on whether to set aside a portion of the \$10 million for a contract that would be awarded to a national organization to conduct outreach, which we believe may be necessary to facilitate the efficient and effective distribution of equipment for use by people who are deaf-blind. We solicit feedback on whether the Commission has the discretion under Section 105 to adopt this approach and ask for input on the appropriate term for such a contract, the extent to which such contract should contain strict guidelines on the type of outreach needed, and specific provisions needed to ensure accountability.

VI. FUNDING

45. As noted above, during the pilot program, we are considering proposals to allow portions of the NDBEDP funding to be used for a national training program and outreach associated with the NDBEDP. In addition to seeking comment on our authority to set aside these funding portions, we seek input on suggested amounts for each of their allocations, with a goal of not unduly limiting the amount of money left for the principal purpose of the program, equipment distribution. We also seek comment on an appropriate means of dividing up the remainder of the NDBEDP \$10 million allocation. We tentatively propose a funding allocation that is proportional to the population at large of each state and seek comments on this approach. We propose to require that all costs incurred through participation in the NDBEDP pilot program be reasonable, and seek comment on whether caps should be placed on the administrative functions covered under the pilot program,⁹⁸ and if such caps should vary based on factors such as state deaf-blind population numbers. We understand that certain states have larger populations of people who are deaf-blind than others, and further solicit input on whether there is a way to determine accurately the population of eligible deaf-blind residents in each of the states, and whether we should use those statistics as the basis to allocate NDBEDP funds among the states.

46. Distribution of funding can occur in one of two ways: by advance distribution of one-time allocations to eligible programs or via a reimbursement mechanism that pays for equipment already distributed (up to each state's allotment). We tentatively conclude that the latter approach would provide greater accountability, as well as provide the incentives needed for local distribution programs to actively locate and provide equipment to their deaf-blind communities. We seek comment on this approach, which would periodically reimburse authorized distribution programs for equipment distributed in their states up to the allocable ceiling for that state, and ask at what intervals such payments should be made. We further seek comment on a proposal by ACB to require that any money allocated to a state that is not spent in any given year be returned to the TRS Fund, to be re-distributed to all of the states during subsequent funding years.⁹⁹ This approach would ensure that the failure of any program to fulfill its commitment to distribute devices would not penalize people who are deaf-blind because unused funds

⁹⁷ See para. 47, *infra*.

⁹⁸ Such administrative costs may include, but not necessarily be limited to, costs associated with individual assessments, installation, training, outreach, and reporting obligations associated with equipment distributed under this program.

⁹⁹ ACB Comments at 11.

would continue to be available in future years for their communication needs. Nevertheless, Section 105 of the CVAA limits the total amount of support that the Commission may provide to this program for any fiscal year to \$10 million. In light of this statutory restriction, we seek comment on whether we have the discretion to carry over unused allotments to subsequent years.

VII. OVERSIGHT AND REPORTING

47. In the *NDBEDP PN*, we sought comment on the most appropriate way to ensure that the distribution of funds under the NDBEDP is achieved in a manner that fulfills the goals of the CVAA, is effective and efficient in its compensation to qualifying programs, and protects against waste, fraud, and abuse.¹⁰⁰ In this regard, we sought comment on recordkeeping, reporting and auditing requirements the Commission should adopt, as well as any other safeguards needed to promote and effectuate oversight of the NDBEDP and participating state and local distribution programs.

48. For the most part, parties responding to these inquiries unanimously stress the importance of having the Commission set up an effective oversight and reporting mechanism that ensures the NDBEDP is used for its intended purpose.¹⁰¹ Some parties recommend contracting out to an independent entity for monitoring as well as conducting audits.¹⁰² Two commenters recommend the retention of records by state programs, one for ten years,¹⁰³ and one for five years.¹⁰⁴

49. We confirm the need for thorough reporting and oversight requirements as necessary components of the NDBEDP, to assess the effectiveness of our pilot program, to ensure that the Fund is being used for the purpose intended by Congress, and to provide the Commission with the ability to detect and prevent potential fraud, waste and abuse of the Fund. Most importantly, data on the distributed equipment and related services will provide the Commission with much needed information about the technology needs and preferences of the deaf-blind community, along with how local distribution programs are able to meet those needs. To this end, we propose to require that state EDPs and certified program recipients in states without EDPs submit data every six months until the completion of the pilot program on the following:

- For each piece of equipment distributed, its name, serial number, brand and function (*e.g.*, amplifier, Braille embosser), its cost, the type of service with which it is used (*e.g.*, telephone, Internet), and the type of relay service it can access (*e.g.*, TRS, video relay, etc.);
- For each piece of equipment distributed, the identity and contact information for the consumer receiving that equipment

¹⁰⁰ *NDBEDP PN* at 6-7.

¹⁰¹ For example, the AADB Joint Commenters recommend having the Disability Rights Office provide annual reports to the Commission and stakeholders that cover, among other things, progress made on distribution efforts and ways to improve service levels. AADB Joint Commenters at 15; *see also*, ACB Comments at 12 (urging strict reporting requirements); DBYAA Comments at 3 (emphasizing the importance of efficient program monitoring).

¹⁰² *See, e.g.*, ACB Comments at 10; DBYAA Comments at 3 (suggesting independent monitoring of the NDBEDP); Myers Comments at 4 (recommending independent audits to determine program effectiveness).

¹⁰³ Virginia SIT Comments at 4.

¹⁰⁴ Myers Comments at 4.

- For each piece of equipment distributed, the identity and contact information for the individual attesting to the disability of the individual who is deaf-blind;
- The cost, time and any other resources allocated to assessing an individual's equipment need
- The cost, time and any other resources allocated to installing equipment and training deaf-blind participants on using equipment;
- The cost, time and any other resources allocated to repair and maintenance of equipment;
- The cost, time and any other resources allocated to outreach activities related to the NDBEDP; and
- The cost, time and any other resources allocated to upgrading the distributed equipment during the pilot program, along with the nature of such upgrades (*e.g.*, software upgrade; replacement part);
- Any research and development performed.

50. We seek comment on our proposal to gather the above information, and solicit recommendations on any additional data we should require local distribution programs to submit. For example, should these semi-annual reports also contain proposed best practices for each of the obligations noted above, including which equipment is most effective in terms of usability and reliability for deaf-blind participants? Should programs be required to report on the administrative expenses incurred in participating in this program? Should programs be required to report complaints received on the equipment and appeals on eligibility, as well as other consumer related disputes? We also seek comment on how long programs should be required to retain electronic records with the above information, as well as what specified period of time – for example, 5 years – is appropriate for the retention of these records. As noted above, we propose that data will be collected on the identity and contact information for both individuals receiving equipment under the NDBEDP and individuals attesting to the disabilities of those individuals. We seek comment on what safeguards the Commission should adopt to ensure that the contact information for these individuals is protected and kept in a confidential manner.

51. We propose that certified distribution programs be subject to regular audits by an independent entity to prevent fraud, waste and abuse, and ask what would be an appropriate interval of time for such audits to be conducted. Additionally, we tentatively conclude that equipment distribution programs covered under the NDBEDP not be permitted to accept any type of financial arrangement from equipment vendors that could incentivize the purchase of particular equipment. Such arrangements could run counter to the program's purpose, which is to provide equipment that meets each individual's unique needs.

52. Finally, we tentatively propose that program administrators who submit any data to the Commission certify such data to be true and accurate under penalty of perjury.¹⁰⁵

¹⁰⁵ We have tentatively adopted a similar measure for VRS providers. *See Structure and Practices of Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, 25 FCC Rcd 6012, 6035, para. 58 (2010).

VIII. LOGISTICS AND DIVISION OF RESPONSIBILITIES

53. We propose to delegate authority to the Consumer and Governmental Affairs Bureau to designate a NDBEDP Program Administrator. This individual would work in collaboration with the TRS Fund Administrator, and be responsible for:

- Identifying, verifying and contacting current state EDPs to notify them of their eligibility for program participation
- Reviewing program applications and certifying local programs to administer the distribution of equipment in each of the states
- Serving as the Commission point of contact and overseeing all of the certified distribution programs
- Overseeing any national training programs
- Reviewing and evaluating state data for best practices
- Working with Commission staff to adopt permanent rules for the NDBEDP

We further propose that the Fund Administrator (as directed by the NDBEDP Program Administrator) have responsibility for:

- Reviewing cost submissions and releasing funds for equipment purchases and authorized associated services
- Releasing funds for a nationwide training program
- Releasing funds for a nationwide outreach effort
- Releasing funds for other purposes, as directed by the Commission
- Collecting data as needed for delivery to the NDBEDP Program Administrator

IX. OTHER CONSIDERATIONS

54. *Advisory Body.* A few commenters recommend the creation of an advisory body to help provide oversight and feedback on the NDBEDP. The AADB Joint Commenters suggest that this body could evaluate the program's benchmarks, discuss consumer experiences with the Commission, and gather input on new technologies.¹⁰⁶ They and others note that maintaining ongoing contact with the deaf-blind community is necessary because in the past, deaf-blind consumers rarely have been consulted by the programs designed to assist them. Along these lines, CSD recommends that the Commission periodically consult with experts in the field of deaf-blindness in order to stay abreast of the latest technologies.¹⁰⁷

¹⁰⁶ AADB Joint Commenters at 15-16.

¹⁰⁷ CSD Comments at 3-4.

55. Because of the specialized nature of this program, we seek comment on the need for a newly created advisory body that could work with the NDBEDP Program Administrator and Fund Administrator to evaluate consumer experiences with the program, assess the program's benefits, explore new technologies, and consider changes to the program's features. Alternatively, we seek comment on whether this advisory function can be satisfactorily accomplished by charging one of the following existing advisory bodies to monitor the operations and effectiveness of the NDBEDP: the FCC's Consumer Advisory Committee, whose purpose is to make recommendations to the Commission regarding consumer issues¹⁰⁸ or the Interstate TRS Fund Advisory Council, whose purpose is to monitor TRS cost recovery matters.¹⁰⁹

56. *Central Repository.* According to a number of commenters, although many state programs already give out specialized CPE to people who are deaf-blind, there has never been a central repository to which individuals may turn to ascertain the resources that these programs provide. For this reason, HKNC urges that if the Commission decides to adopt a state equipment distributor model (such as that proposed by this pilot program), it consider the creation of a centralized resource or method to inform people who are deaf-blind about the equipment and services available to them.¹¹⁰ ACB proposes that the Commission consider establishing a central website for this purpose, which would provide data about each of the state programs.¹¹¹ Similarly, Inclusive Technologies proposes that the NDBEDP be coordinated with the Commission's clearinghouse of accessible products and accessibility solutions, required elsewhere in the CVAA,¹¹² to provide information and outreach about equipment available under the NDBEDP.¹¹³ We seek comments on use of the future clearinghouse for this purpose, including ways in which the NDBEDP and clearinghouse could work together to inform the deaf-blind public about the local equipment distribution programs available to them.

57. *Whistleblower Provision.* We recognize that the NDBEDP involves the use and management of funds which may, like any funding program, be susceptible to waste, abuse and fraud. As part of the Commission's obligation to ensure that this fund is being used for its targeted consumers, we propose that the Commission adopt a specific whistleblower protection rule for the employees of state and local programs authorized to distribute equipment under the NDBEDP.¹¹⁴ We seek comment on this proposal, our authority to adopt it, and the scope and contents of such a rule.

58. *NDBEDP as a Supplemental Funding Source.* When it is established, the NDBEDP will be one of several governmental programs that either authorize or direct the distribution of specialized CPE to the deaf-blind community. These other programs include the Individuals with Disabilities Education Act,¹¹⁵ which requires educational programs to provide the equipment and services that deaf-blind children need to receive a free and appropriate public education; vocational rehabilitation programs,

¹⁰⁸ See, <http://www.fcc.gov/cgb/cac/>.

¹⁰⁹ See, <http://www.neca.org>.

¹¹⁰ HKNC Comments at 3.

¹¹¹ ACB Comments at 12.

¹¹² Pub. L. 111-260, § 104(a), to be codified at 47 C.F.R. § 717(d).

¹¹³ Inclusive Technologies Comments at 2.

¹¹⁴ In May of this year, the Commission proposed a similar whistleblower protection rule for employees and subcontractors of VRS providers. *Structure and practices of the Video Relay Service Program*, Declaratory Ruling, Order, and Notice of Proposed Rulemaking CG Dkt. No. 01-51, 25 FCC Rcd 6012 at 6032 ¶ 50 (2010).

¹¹⁵ 20 U.S.C. § 1400 *et seq.*

which provide specialized equipment to people with disabilities seeking employment; and Section 501 of the Rehabilitation Act,¹¹⁶ which requires reasonable accommodations to be provided to federal employees with disabilities. ACB requests a rule to clarify that Section 105 is not intended to replace or pre-empt these funding sources and governmental directives.¹¹⁷ We propose that where these existing federal or state programs already direct or fund equipment distribution for the deaf-blind community, or are required to provide equipment to certain eligible deaf-blind persons, the NDBEDP work along side these programs, to serve as a supplement to, rather than as a replacement for, their distribution efforts. In this manner, we will be able to maximize the availability of these funds for those who are unable to qualify for such other programs. We seek comment on this proposal. In addition, we seek comment on the need for safeguards to ensure that individuals seeking equipment under the NDBEDP do not “double dip” into multiple equipment distribution programs for the same devices. For example, as part of the application process, should we require that individual applicants be required to certify that they have not otherwise received the same equipment from other federal and state program sources? Given that many people who are deaf-blind may require multiple devices to achieve the communications accessibility intended by Congress under the CVAA, how should we define such “double dipping?” Finally, given our overall goal to distribute end-user equipment under this program to individuals who have not been able to otherwise receive such equipment, should we adopt a rule that disqualifies from participation, during this pilot program, those individuals who are eligible under or have already received equipment from these other equipment distribution programs? We seek comment on whether such an approach during our pilot program would assist in reaching portions of this population that have never been served by any equipment distribution source.

X. PROCEDURAL MATTERS

A. Regulatory Flexibility

59. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this *NPRM*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the Notice and must have a separate and distinct heading designating them as responses to the IRFA.

B. Paperwork Reduction Act

60. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

¹¹⁶ 29 U.S.C. § 791, *et seq.*

¹¹⁷ ACB Comments at 3.

C. Ex Parte Presentations

61. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.¹¹⁸ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.¹¹⁹ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.¹²⁰

D. Comment Filing Procedures

62. Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹²¹ interested parties may file comments and reply comments regarding the *NPRM* on or before the dates indicated on the first page of this document.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, which in this instance is CG Docket No. 10-210.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
 - In addition, parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

¹¹⁸ 47 C.F.R. §§ 1.1200–1.1216.

¹¹⁹ 47 C.F.R. § 1.1206(b)(2).

¹²⁰ 47 C.F.R. § 1.1206(b).

¹²¹ 47 C.F.R. §§ 1.415, 1.419.

63. Documents in CG Docket No. 10-210 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

64. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

XI. ORDERING CLAUSES

65. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), and 719 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 619, that this Notice of Proposed Rulemaking IS ADOPTED.

66. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Draft Proposed Rules for Public Comment

For the reasons stated in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B),(c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254(k), and 619, unless otherwise noted.

2. The authority citation for subpart F is revised to read as follows:

Authority: 47 U.S.C. 151-154; 225, 255, 303(r), and 619.

3. Add §64.610 to subpart F to read as follows:

§ 64.610 Establishment of a National Deaf-Blind Equipment Distribution Pilot Program.

(a) *Certification to receive funding from the NDBEDP.* All programs seeking to distribute specialized customer premises equipment and receive compensation for the distribution of such equipment from the Interstate TRS Fund, under the National Deaf-Blind Equipment Distribution Pilot Program (NDBEDP pilot), must first receive certification from the Commission.

(1) Any state with an established equipment distribution program (EDP), may have such EDP apply for certification as the sole authorized entity for the state to receive compensation for the distribution of equipment to the deaf-blind residents of that state.

(2) In states without an EDP, states that have an EDP that chooses not to apply for certification or states that have an EDP that is not deemed eligible to participate in the NDBEDP by the Commission under this section, other public programs, including, but not limited to, vocational rehabilitation programs, assistive technology programs, or schools for the deaf, blind or deaf-blind; or private entities, including but not limited to, organizational affiliates, independent living centers, or private educational facilities, may apply to the Commission for certification to distribute the specialized CPE covered by the NDBEDP.

(3) The Commission shall review applications and determine whether to grant certification based on the following factors: (A) expertise in the field of deaf-blindness, including a strong familiarity with the communications needs of this population; (B) adequate staffing and facilities to administer the program; (C) experience with the distribution of specialized CPE, especially to people who are deaf-blind; (D) the ability to install specialized CPE covered under the program and to train users on how to use that equipment; (E) the ability to effectively communicate with people who are deaf-blind (for training and other purposes), including the ability to communicate in sign language, provide materials in Braille, and use other assistive technologies and methods to achieve effective communication; and (F) the ability to distribute equipment and related services to eligible individuals throughout the state (including to remote areas), either directly or in coordination with other local programs.

(b) *Definition.* For purposes of this section, the following definitions shall apply:

(1) *Individual who is deaf-blind.* Any person (A) who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions; (B) has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and (C) for whom the combination of impairments described in clauses (A) and (B) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation. This definition also includes any individual who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in achieving communications.

(2) *Low-income.* 400 percent of the Federal Poverty Guidelines as defined at 42 U.S.C. §9902(2) or enrolled in one of the following subsidy programs: Federal Public Housing Assistance or Section 8; Supplemental Nutrition Assistance Program, formerly known as Food Stamps; Low Income Home Energy Assistance Program; Medicaid; National School Lunch Program's free lunch program; Supplemental Security Income; or Temporary Assistance for Needy Families.

(c) *Verification of disability.* Individuals claiming eligibility under the NDBEDP are permitted to obtain verification from any practicing professional who has direct knowledge of the individual's disability.

(1) Such professionals would include, but not be limited to, a vocational rehabilitation counselor, audiologist, speech pathologist, educator, hearing instrument specialist, or physician.

(2) Any of these professionals must be able to attest to the applicant's physical disability (as defined above), and, in doing so, may include information about the inability of such individual to use traditional or emerging communications equipment as a result of his or her hearing and vision loss.

(d) *Prohibition against requiring employment.* No EDP or other program authorized to distribute equipment under the NDBEDP may impose as a qualification for eligibility in this program the extent to which a person who is deaf-blind is employed or actively seeking employment.

(e) *Equipment distribution and related services.* Each program certified under the NDBEDP pilot program must:

(1) distribute specialized customer premises equipment needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services or advanced telecommunications and information services, accessible to individuals who are deaf-blind;

(2) verify that each individual applying to the NDBEDP pilot program for equipment meets the definition of an individual who is deaf-blind contained at 64.610(b); and

(3) verify that each individual applying to the NDBEDP pilot program for equipment meets the income eligibility requirements established by the Commission.

- (f) Each program certified under the NDBEDP pilot program may:
- (1) use a portion of the funds received under the NDBEDP pilot program for individual needs assessments;
 - (2) use a portion of the funds received under the NDBEDP pilot program for installation of equipment and consumer training; and
 - (3) use a portion of the funds received under the NDBEDP pilot program for maintenance, repairs, and warranties on equipment distributed to consumers.
- (g) *Reporting requirements.* Each program certified under the NDBEDP pilot program must submit data every six months until the completion of the pilot program on the following:
- (1) for each piece of equipment distributed, its name, serial number, brand and function, its cost, the type of service with which it is used, and the type of relay service it can access;
 - (2) for each piece of equipment distributed, the identity and contact information for the consumer receiving that equipment;
 - (3) for each piece of equipment distributed, the identity and contact information for the individual attesting to the disability of the individual who is deaf-blind;
 - (4) the cost, time and any other resources allocated to assessing an individual's equipment needs;
 - (5) the cost, time and any other resources allocated to installing equipment and training deaf-blind participants on using equipment;
 - (6) the cost, time and any other resources allocated to repair and maintenance of equipment;
 - (7) the cost, time and any other resources allocated to outreach activities related to the NDBEDP;
 - (8) the cost, time and any other resources allocated to upgrading the distributed equipment during the pilot program, along with the nature of such upgrades; and
- (h) *Administration of the program.* The Consumer and Governmental Affairs Bureau shall designate the NDBEDP Program Administrator.
- (1) This Commission official will work in collaboration with the TRS Fund Administrator, and be responsible for:
 - (A) identifying, verifying and contacting current state EDPs to notify them of their eligibility for program participation;
 - (B) reviewing program applications and certifying local programs to administer the distribution of equipment in each of the states;
 - (C) serving as the Commission point of contact and overseeing all of the certified distribution programs
 - (D) overseeing training programs established under this program;

(E) reviewing and evaluating state data for best practices; and

(F) working with Commission staff to adopt permanent rules for the NDBEDP.

(2) The Fund Administrator, as directed by the NDBEDP Program Administrator, shall have responsibility for:

(A) reviewing cost submissions and releasing funds for equipment that has been distributed and authorized associated services;

(B) releasing funds for a nationwide training program;

(C) releasing funds for a nationwide outreach effort

(D) releasing funds for other purposes, as requested by the Commission; and

(E) collecting data as needed for delivery to the NDBEDP Program Administrator.

(i) *Payments to certified NDBEDP participants.* Payments to certified program participants under the NDBEDP shall be made in connection with equipment that has been distributed to eligible individuals, up to a state's funding allotment under this program.

(j) *Expiration of rules.* These rules expire at the termination of the pilot program.

APPENDIX B
List of Commenters

Commenters

American Council of the Blind (ACB)
Arizona Association of the Deaf-Blind (AZ ADB)
California Public Utility Commission (California PUC)
Communications Services for the Deaf (CSD)
Connecticut Board of Education and Services for the Blind (Connecticut Board)
American Association of the Deaf-Blind, Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, Hearing Loss Association of America, California Coalition of Agencies Serving Deaf and Hard of Hearing, Deaf Seniors of America, Georgia Association of the Deaf-Blind, Ohio Association of the Deaf-Blind, Deaf-Blind Explorers (AADB Joint Commenters)
Deaf-Blind Young Adults in Action (DBYAA)
Helen Keller National Center (HKNC)
Inclusive Technologies
Liabl-Crowe, Darlene
Lighthouse for the Blind, Inc. (Lighthouse)
Missouri Assistive Technology Program (MoAT)
Myers, Teresa
National Coalition on Deafblindness
Parker, Amy T.
Telecommunications Equipment Distribution Program (TEDPA)
Virginia Statewide Interagency Team (Virginia SIT)

Reply Commenters

American Association of People with Disabilities (AAPD)
California PUC
CSD
Inclusive Technologies

Ex Parte Filings

Florida Public Service Commission (Florida PSC)
HKNC

APPENDIX C

Initial Regulatory Flexibility Certification

CG Docket No. 10-210

1. The Regulatory Flexibility Act of 1980, as amended (RFA),¹ requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴ A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵

2. In the Notice, the Commission seeks comment on its proposal to implement section 105 of The Twenty-First Century Communications and Video Accessibility Act of 2010 (Communications Accessibility Act or CVAA), signed into law by President Obama on October 8, 2010, that requires the Commission to take various measures to ensure that people with disabilities have access to emerging communications technologies in the 21st Century.⁶ Section 105 of this law directs the Commission to establish rules within six months of enactment of the new statute that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (specialized CPE) to people who are deaf-blind. The goal of this National Deaf-Blind Equipment Distribution Program (NDBEDP) is to make equipment used with telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low income individuals who are deaf-blind.⁷ This item proposes rules to create an effective and efficient process governing the distribution of specialized CPE to enhance and promote access to telecommunications and related communications services by low-income individuals who are deaf-blind.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 605(b).

³ 5 U.S.C. § 601(6).

⁴ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁵ 15 U.S.C. § 632.

⁶ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010).

⁷ *Id.* at § 105, to be codified at 47 U.S.C. § 719.

3. Specifically, the Commission seeks comment on a proposed definition of individuals who are deaf-blind for purposes of eligibility in the NDBEDP, proposed criteria for verifying a person's disability, proposed income criteria, and other eligibility considerations. In addition, the Commission seeks comment on the scope of specialized CPE covered under this program; and whether any portion of the funding should be allocated to research and development, individualized assessment of communication needs, installation and training, maintenance, warranties, repairs, outreach, or education. The Commission seeks comment on the appropriate allocation of funding, and on a proposal for specific reporting requirements to be imposed on recipients of NDBEDP funding. The Commission also seeks comment on the logistics of administering the program. Finally, the Commission seeks comment on several other considerations including the establishment of: an advisory body to provide input on the program; a central repository of information; whistleblower protections for individuals who provide information on fraud, waste and abuse; and a vehicle for the NDBEDP to be used as a supplemental funding source to other federal programs.

4. The Commission proposes to require that recipients of NDBEDP funding seeking to distribute specialized CPE and receive compensation for the distribution of such equipment under the NDBEDP pilot program first receive certification from the Commission. The Commission proposes the following factors to be considered in determining whether to grant certification: (i) expertise in the field of deaf-blindness, including a strong familiarity with the communications needs of this population; (ii) adequate staffing and facilities to administer the program; (iii) experience with the distribution of specialized CPE, especially to people who are deaf-blind; (iv) the ability to install specialized CPE covered under the program and to train users on how to use that equipment; (v) the ability to effectively communicate with people who are deaf-blind (for training and other purposes), including the ability to communicate in sign language, provide materials in Braille, and use other assistive technologies and methods to achieve effective communication; and (vi) the ability to distribute equipment and related services to eligible individuals throughout the state (including to remote areas), either directly or in coordination with other local programs.

5. In addition, the Commission proposes to require that each program certified under the NDBEDP pilot program must: (1) distribute specialized customer premises equipment needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible to individuals who are deaf-blind; (2) verify that each individual applying to the NDBEDP pilot program for equipment meets the definition of an individual who is deaf-blind contained at 64.610(b); and (3) verify that each individual applying to the NDBEDP pilot program for equipment meets the income eligibility requirements established by the Commission. The Commission proposes to allow each program certified under the NDBEDP pilot program to: (1) use a portion of the funds received under the NDBEDP pilot program for individual needs assessments; (2) use a portion of the funds received under the NDBEDP pilot program for installation of equipment and consumer training; and (3) use a portion of the funds received under the NDBEDP pilot program for maintenance, repairs, and warranties on equipment distributed to consumers.

6. Finally, the Commission proposes to require each program certified under the NDBEDP pilot program to submit data every six months until the completion of the pilot program on the following: (1) for each piece of equipment distributed, its name, serial number, brand and function, its cost, the type of service with which it is used, and the type of relay service it can access; (2) for each piece of equipment distributed, the identity and contact information for the consumer receiving that equipment; (3) for each piece of equipment distributed, the identity and contact information for the individual attesting to the disability of the individual who is deaf-blind; (4) the cost, time and any other resources allocated to assessing an individual's equipment needs; (5) the cost, time and any other resources allocated to

installing equipment and training deaf-blind participants on using equipment; (6) the cost, time and any other resources allocated to repair and maintenance of equipment; (7) the cost, time and any other resources allocated to outreach activities related to the NDBEDP; and (8) the cost, time, and any other allocation related to upgrading the distributed equipment during the pilot program, along with the nature of such upgrades.

7. With regard to whether a *substantial number* of small entities may be economically impacted by the requirements proposed in this *Notice*, the Commission notes that a substantial number of small entities will be likely be affected; however, the economic impact on such entities will be de minimis. Most participating entities are likely meet the definition of a small entity as a “small organization,” or a “small governmental jurisdiction.” Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.⁸ First, nationwide, there are a total of approximately 27.2 million small businesses, according to the SBA.⁹ In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁰ Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹¹ Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹² Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹³ We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”¹⁴ Thus, we estimate that most governmental jurisdictions are small. In addition, it is possible that some entities that fall under the category of “advanced communications services” may be participants in the NDBEDP pilot program. Section 101 of Title I of the Act defines “advanced communications services” to mean (A) interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable video conferencing service.¹⁵ While the Commission's rules already define interconnected VoIP service,¹⁶ the Act provides new definitions for non-interconnected VoIP service,¹⁷ “electronic messaging service”¹⁸ and “interoperable video conferencing service”¹⁹

⁸ See 5 U.S.C. §§ 601(3)-(6).

⁹ See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs> (last visited Oct. 21, 2009).

¹⁰ 5 U.S.C. § 601(4).

¹¹ INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2002).

¹² 5 U.S.C. § 601(5).

¹³ U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2006, Section 8, page 272, tbl. 415.

¹⁴ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2006, section 8, page 273, tbl. 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

¹⁵ Pub. L. No. 111-260, § 101(1) (amending Section 3 of the Communications Act).

¹⁶ 47 C.F.R. § 9.3.

¹⁷ Pub. L. No. 111-260, § 101(1) (adding new Section 3(58) to the Communications Act, to be codified as 47 U.S.C. § 153(58)).

¹⁸ *Id.* (adding new Section 3(56) to the Communications Act, to be codified as 47 U.S.C. § 153(56)).

¹⁹ *Id.* (adding new Section 3(59) to the Communications Act, to be codified as 47 U.S.C. § 153(59)).

8. While the Congressional mandate has led us to list the above entities as the ones that in all reasonable likelihood will function as EDPs, there exists the possibility that our list herein of entities that will foreseeably function as EDPs may not be complete and/or may subsequently include entities not listed above. This includes entities which may not fit into traditional categories currently under the Commission's jurisdiction. However, as noted above, Section 105 of the CVAA gives the Commission broad authority to establish rules that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (specialized CPE) to people who are deaf-blind.

9. In addition, given that all providers potentially affected by the proposed rules, including those deemed to be small entities under the SBA's standard, would be entitled to receive prompt reimbursement for their reasonable costs of participation and compliance, the Commission concludes that the *Notice*, if adopted, will not have a significant economic impact on these small entities.

10. Therefore, we certify that the proposals in this *Notice*, if adopted, will not have a significant economic impact on a substantial number of small entities.

11. The Commission will send a copy of the *Notice*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.²⁰ This initial certification will also be published in the Federal Register.²¹

²⁰ 5 U.S.C. § 605(b).

²¹ 5 U.S.C. § 605(b).

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210

The Twenty-First Century Communications and Video Accessibility Act was enacted to ensure that people with disabilities have access to today's communications technologies and services. It is fitting that we begin implementing this law with these proposals to bring the benefits of modern communications to people with low incomes who are both deaf and blind. It is my hope that with access to Twenty-First Century communications services, these individuals will be able to participate more fully in the economic and civic life of our nation.